UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/37/Add.1
15 October 1997

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1997

Addendum

KUWAIT

[Original: ARABIC]
[5 August 1997]

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GE.97-18580 (E)

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Introduction

1. Man will always be a matter of concern to the various political, economic, social, cultural, legal and other systems which, within the framework of contemporary modern societies based on the principles of justice, equality and freedom, are endeavouring to promote, consolidate and develop the concepts of human rights which constitute part of the values and ideals of human civilization.

2. Since its foundation, the State of Kuwait has diligently adopted these concepts and turned them into fundamental principles of Kuwaiti society, which has put them into practice in various ways at the national and international levels.

3. At the national level, Kuwait has endeavoured, inter alia, to establish a legal foundation for the promotion of human rights issues on various vital matters of concern to mankind, particularly through the promulgation of the legislation and regulations on which this foundation is largely based.

4. In addition to these national endeavours, at the international level the State of Kuwait has also acceded to numerous international human rights instruments, including the Convention forming the subject of this report which became applicable in the State of Kuwait on 17 April 1996 following completion of all the national procedures for its entry into force.

5. When speaking of the State of Kuwait's accession to this Convention, reference must be made to a basic component of the State's fundamental position in this regard, namely its total rejection of all types of torture, which constitutes one of the most odious violations of human rights and, as such, must be designated as a criminal offence. Kuwait's legislation carefully emphasized that fact a long time before the State acceded to this Convention, as will be seen below in this report.

6. Accordingly, within the context of the State of Kuwait's fulfilment of its obligations under the Convention, and in response to the note dated 20 January 1997 from the Centre for Human Rights/Committee against Torture requesting the State of Kuwait to submit its initial report on the measures taken pursuant to article 19, paragraph 1, of the Convention, the State of Kuwait has pleasure in presenting this report, which has been prepared in the light of the guidelines adopted by the Committee against Torture in November 1989 concerning the form and content of initial reports.

7. This report consists of two parts, Part I comprising a general introduction to Kuwait and Part II comprising information on the legislative, judicial and administrative measures taken by the State of Kuwait to give effect to articles 2 to 16 of the Convention.

I. GENERAL

A. Land and people

8. In this section, precise and detailed information should be provided concerning the population and demographic situation in Kuwait, in addition to the other information which the reporting State should provide in accordance with the consolidated guidelines for part I of the reports of States parties. With regard to the viewpoint of the State of Kuwait on the content of this section, it should be noted that the information required from the State is documented in official publications issued by its competent authorities. Accordingly, since those publications contain an adequate amount of the requisite information, they can be referred to as annexes forming an integral part of this report.* These annexes comprise:

1. A booklet published by the Ministry of Planning containing information and statistics on the following matters:

(a) The location of the State;

(b) The climate;

(c) The size of the population, by nationality, educational level and sex, as shown by the recent census conducted in April 1995;

(d) Government housing programmes and the distribution of housing units by governorate;

(e) The labour force, by sector, nationality and educational level;

(f) National income and expenditure;

(g) External trade, industry, agriculture and fishery and livestock resources;

(h) Educational services from the standpoint of the number of schools and pupils, by sex and nationality, and the number of adult education and literacy centres;

(i) Health services from the standpoint of the number of hospitals, beds and medical personnel working in the government and private sectors (annex 1).

2. Statistical publications:

(a) The monthly statistical bulletin for December 1996;

(b) The statistical yearbook for 1995;

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* The annexes can be consulted at the Office of the United Nations High Commissioner for Human Rights.

(c) The general population census of 1995;

(d) The annual bulletin of vital statistics (births and deaths) for 1994;

(e) Amended preliminary estimates of the national accounts for the years 1993 to 1995 (annex 2).

B. General political structure

9. This section gives an account of some aspects of the general political structure of the State including, in particular, the form of the State, its system of government and its authorities.

10. With regard to the form of the State and its system of government, Kuwait is an independent and fully sovereign Arab State the people of which form part of the Arab nation. The religion of the State is Islam and its official language is Arabic. It has a democratic system of government in which sovereignty resides with the people, who are the source of all authority. Sovereignty is exercised in the manner specified in the State's Constitution. Kuwaiti society is based on justice, liberty and equality and its citizens enjoy close links of mutual aid and affection.

11. For a clearer understanding of Kuwait's democratic system of government, it should be noted that, as indicated in the Explanatory Note on the Constitution, the Constitution viewed this democratic system, which it adopted, as a compromise between the parliamentary and presidential systems but with a more pronounced tendency towards the former given the fact that the presidential system was intended for republics.

12. In keeping with the intrinsic principles of democracy, Kuwait's system of government has adopted the firmly established constitutional concept of the separation of powers, each being required to cooperate with the others but without being permitted to relinquish all or any part of its jurisdiction as defined in the Constitution.

13. The Kuwaiti Constitution, which consists of five chapters, devotes a separate chapter (chapter IV, consisting of five sections), to the question of powers.

14. First of all, it indicates that legislative power is exercised by the Amir and the National Assembly in accordance with the Constitution, executive power being exercised by the Amir, the Cabinet and the ministers in the manner specified in the Constitution, and judicial power being exercised by the courts, in the name of the Amir, within the limits laid down in the Constitution.

15. Section 2 of the said chapter indicates, inter alia, that the head of State exercises his jurisdictional authority through his ministers and is empowered to appoint and dismiss the Prime Minister. In his capacity as head of State, he is the commander-in-chief of the armed forces and is empowered to appoint and dismiss officers in the manner provided by law. He promulgates the regulations needed to enforce the law, as well as those needed to control

and regulate public departments and agencies of the State. He also appoints civil servants, military personnel and diplomatic representatives accredited to foreign States.

16. In addition to the above, the provisions of the Constitution also refer to other powers of the Amir.

17. Legislative power is exercised by the Amir and the National Assembly, consisting of 50 members elected directly by universal suffrage and secret ballot for a four-term of office. This is the authority which is empowered to promulgate legislation under the terms of the Constitution, article 79 of which indicates that no legislative enactment may be promulgated unless it has been approved by the National Assembly and ratified by the Amir. The National Assembly, like the Amir, has the right to propose bills of law and exercises supervisory authority over the activities of the Government. It is also empowered to approve the international conventions to which the State of Kuwait accedes and which are regarded as being the most important treaties concluded by the State in accordance with article 70, paragraph 2, of the Constitution.

18. Section 3 of the said chapter sets forth the provisions concerning legislative power. Act No. 12 of 1963, promulgating the rules of procedure of the National Assembly, regulates that body's functions and activities.

19. The election of members of the National Assembly is regulated by the provisions of Act No. 35 of 1962 (annex 3).

20. In short, it can be said that the legislature has the widest legislative jurisdiction.

21. Executive power is exercised by the Amir and the Cabinet, which controls the agencies of the State, formulates and monitors the implementation of the general policy of the State and supervises the work of the government departments. Each minister is responsible for supervising the affairs of his ministry, implementing the general policy of the Government and formulating and monitoring the implementation of his ministry's policies.

22. Judicial power is exercised by the courts in the name of the Amir. The Constitution and the law guarantee the independence of the judiciary in accordance with the principle that the honour of the judiciary and the integrity and impartiality of judges form the basis of Government and constitute a guarantee of rights and freedoms.

23. In accordance with the Constitution, in his administration of justice the judge is not subject to any authority. The law guarantees the independence of the judiciary, as well as the safeguards and other provisions concerning judges. An entire section, comprising 12 articles, of the Kuwaiti Constitution is devoted to judicial authority and contains numerous provisions which emphasize the principle of the independence of the judiciary.

24. The Organization of the Judiciary Act No. 23 of 1990 regulates the various levels of courts, defines the composition and powers of the Higher

Council of the Judiciary, regulates judicial appointments and promotions and specifies the duties of judges and the composition and jurisdiction of the Department of Public Prosecutions (annex 4).

25. In this connection, it should also be noted that Act No. 10 of 1996 made numerous amendments to the above-mentioned Act with a view to ensuring greater independence for this important institution (annex 5).

C. General information on the application of the provisions of the Convention

1. General legal framework for the protection of human rights in Kuwait within the context of which torture, as defined in article 1 of the Convention, is prohibited and is being eliminated

26. It is noteworthy that the political and legal framework of basic principles and provisions for the protection of human rights in the State of Kuwait is embodied in the Kuwaiti Constitution promulgated on 11 November 1962 which, as the State's basic law, carefully establishes these principles in numerous articles concerning the form of the political system, the fundamental constituents of Kuwaiti society, public rights and obligations and the separation of powers. Hence, the Kuwaiti Constitution can be said to form the political and legal basis for the protection of human rights as a whole in Kuwait. In fact, numerous legislative enactments have been promulgated, pursuant to those constitutional provisions, to safeguard human rights in the political, civil, penal, economic, cultural, social and other relevant fields in the State of Kuwait. It should also be borne in mind that many Kuwaiti legislative enactments concerning vital human issues were promulgated prior to the proclamation of the Constitution. These enactments, the most important of which were the Penal Code and the Code of Criminal Procedure promulgated in 1960, sought to provide guarantees of justice for the population of Kuwait.

27. The Explanatory Note on the Kuwaiti Constitution reveals the high degree of concern which the Constitution shows for the question of human rights by clearly stating: "This Constitution has been promulgated in order to consummate the means of democratic government in the State of Kuwait with a view to ensuring a better future in which the country will enjoy greater prosperity and higher international standing and in which its citizens will benefit from more political freedom, equality and social justice; a future that will consolidate the traditions inherent in Arab society by enhancing the feeling of pride in the dignity of the individual, safeguarding the public interest and applying consultative government while maintaining the unity and stability of the country."

28. In this way, the Kuwaiti Constitution clearly expresses the importance of human rights, for which it shows appropriate concern by according them the highest status. In fact, most of the provisions contained in the various chapters of the Constitution embody the principles which the international community has approved and expressed in the international instruments that have been adopted in this regard, to most of which the State of Kuwait has acceded.

29. With regard to the legal framework of Kuwait's policy of prohibiting torture, as defined in article 1 of the Convention, adequate provision therefor is made in the Kuwaiti Constitution, in the legislation in force in the country and in the conventions to which the State has acceded, as will be seen from the following.

30. Article 31 of the Constitution stipulates that no one shall be subjected to torture or to degrading treatment, while article 34 prohibits the infliction of physical or mental harm on any accused person. The constitutional position is further clarified in the Explanatory Note on the Constitution which states that, under the terms of article 31, paragraph 2, no human being to whom God has accorded an honourable status may be subjected to torture or to degrading treatment. The reference here is to an innocent person who has not yet been convicted. If he has been convicted by due process of law, the punishment imposed on him as a criminal cannot be regarded as torture or degrading treatment. The safeguards pertaining to such punishment are specified in articles 32, 33 and 34 of the Constitution.

31. The Explanatory Note further states that the Constitution did not find it necessary to explicitly prohibit "cruel punishment", even though this is prohibited in the Universal Declaration of Human Rights, since this type of punishment is totally alien to Kuwaiti society and is most unlikely to be imposed in the future. Hence, there is no need for a textual prohibition and the Constitution's silence in this connection confirms that "cruel punishment" is inherently prohibited.

32. With regard to the position of Kuwaiti legislation, it is noteworthy that both the Kuwaiti Penal Code and the Code of Criminal Procedure contain numerous provisions which condemn and prohibit torture. For example, the Kuwaiti Penal Code regards acts of torture as criminal offences that merit appropriate penalties in which account is taken of the serious nature of these acts. The Code prescribes a penalty of imprisonment and a fine for any public official who induces an accused person to confess through torture (article 53), subjects an accused person to a punishment more severe than that to which he was legally sentenced (article 54), or who abuses his official authority by treating people in a harsh, dishonourable or physically painful manner (article 56).

33. The Code of Criminal Procedure is an important legal instrument for the protection of human rights and fundamental freedoms since it contains adequate safeguards to ensure enjoyment of the maximum guarantees of judicial fairness when any form of penal proceedings is instituted against any person. For example, the Code contains numerous provisions concerning the prohibition of torture and the inadmissibility of confessions extracted through torture.

34. Concerning the prohibition of any resort to torture during the institution of penal proceedings against an accused person, article 12 of the said Code stipulates that no examiner or other person vested with judicial authority is permitted to use torture or coercion to obtain statements from an accused person or a witness or to prevent them from making any statements that they wish to put on record during the trial, examination or investigation proceedings. The perpetrators of any offence of this type are punishable in accordance with the provisions of the Penal Code. Under article 159 of the

Code of Criminal Procedure, if the court finds that any statements or confessions by the accused were made as a result of torture or coercion it must regard them as null and void and without probative value.

35. With regard to the status of the international conventions to which the State of Kuwait has acceded and which contain provisions prohibiting torture, in this connection it should be noted that, in addition to the Convention forming the subject of this report, there are two other human rights instruments, namely the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which also contain provisions prohibiting torture.

2. The application of international conventions in the State of Kuwait

36. In this connection, it is noteworthy that the provisions of the Convention against Torture are applied in the State of Kuwait in accordance with the procedure specified in article 70 of the Constitution, which stipulates: "The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly accompanied by an appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the Official Gazette. However, treaties of peace and alliance, treaties concerning the territory of the State, its natural resources or sovereign rights or the public or private rights of citizens, as well as treaties of commerce, navigation and residence and treaties which would oblige the State Treasury to bear expenditure not provided for in the budget or which would involve amendments to the laws of Kuwait, can enter into force only when promulgated in the form of a legislative enactment. Treaties may under no circumstances include secret provisions which contradict those declared."

37. This article clearly shows that treaties concluded by the State of Kuwait have the force of law in Kuwait. They apply to all persons and their provisions are binding on the Kuwaiti judiciary. Consequently, on the completion of the constitutional procedures for Kuwait's accession to the Convention against Torture, the Convention became part of Kuwait's domestic legislation in force in the country and all the authorities and agencies in the State, at all levels, are bound thereby.

3. The judicial or administrative authorities which have jurisdiction over matters dealt with in the Convention

38. With regard to the authorities which have jurisdiction over matters dealt with in the Convention and the information required on cases actually dealt with by those authorities during the reporting period, it should be noted that article 1 of Legislative Decree No. 23 of 1990, concerning the organization of the judiciary, as amended by Act No. 10 of 1996, lays down two basic rules for the organization of the judiciary. The first rule is that the courts have jurisdiction to adjudicate in all civil, commercial and administrative disputes, in matters of personal status and also in criminal cases. The consequent harmonization of judicial authority in the State has numerous advantages such as, in particular, consecration of the principle of equality among litigants and avoidance of the problems arising from the difficulty of determining the body competent to exercise jurisdiction in certain cases.

39. The second rule laid down in article 1 is that the principles governing the competence of the courts, from the standpoint of subject matter or jurisdictional value, are determined by law and the competence of the courts cannot be regulated or modified by any lesser legislative instrument. This meets the requirements of article 164 of the Constitution, which stipulates that the functions and competence of the courts shall be specified by law.

40. The above-mentioned Act regulates the various levels of courts. Article 4 thereof stipulates that the courts shall consist of:

(a) The Court of Cassation;

(b) The Court of Appeal;

(c) The General Court;

(d) The Court of Summary Jurisdiction.

41. In this connection, we would like to point out that the above and information contained elsewhere in this report covers only part of the theoretical applications of the legal regulations in the State of Kuwait in regard to the question of the inadmissibility of torture. The main point to be noted in this report is that, far from confining itself to those legal provisions, the State of Kuwait has given attention to the practical aspects of this question, as can be seen from the position adopted by the Kuwaiti judiciary, which has handed down numerous judgements under the terms of which public officials have been punished for committing acts of torture. The following are some examples of these judgements:

(a) The judgement handed down by the Criminal Court in case No. 2822/92/35/292 of 21 May 1995 under which, inter alia, the first defendant was sentenced to three years' penal servitude (bail being set at 500 dinars pending appeal) and five years' suspension from duty on the charges of torture and unlawful detention. The second defendant was sentenced to two years' penal servitude. Both were public officials;

(b) The appeal judgement handed down on 15 November 1995 in the above-mentioned case under which the initial sentence passed on the first defendant was reduced to two and a half years' penal servitude and three years' suspension from duty, the initial sentence passed on the second defendant being reduced to one year and eight months' penal servitude and two years' suspension from duty, on the charge of torture;

(c) Ruling No. 26 of 1996 handed down by the Court of Cassation on 16 September 1996 upholding the appeal judgement;

(d) The judgement of the Criminal Court in case No. 2785/22/1/1996, the penal clauses of which, inter alia, sentenced the first defendant, who was a public official, to a fixed term of two years and four months' penal servitude and one year's suspension from duty on the charges brought against him. He was also ordered to pay provisional civil damages amounting to 5,000 dinars to the plaintiff in the civil proceedings;

(e) The appeal judgement handed down on 22 May 1996 in the above-mentioned case under which the sentence imposed on the first defendant was suspended on condition that he sign an undertaking, secured by a bail bond of 500 dinars, to maintain good conduct for two years (annex 6).

4. The means of redress available to individuals

42. With regard to the means of redress available to individuals claiming to be victims of torture or other cruel, inhuman or degrading treatment or punishment in the State of Kuwait, under the provisions of the Kuwaiti Constitution and the laws in force any individual claiming that any of his rights, as guaranteed by the Constitution or the laws in force, have been violated can lodge a complaint with the Kuwaiti courts at any level of jurisdiction. This is confirmed in article 166 of the Constitution, which stipulates that everyone has a guaranteed right to seek legal redress, the procedures and conditions required for the exercise of this right being specified by law.

43. The Code of Criminal Procedure specifies the procedures and conditions required for the lodging of a criminal complaint and provides litigants with all the legal safeguards needed, including a public hearing, the presence of a lawyer and other safeguards which litigants enjoy under Kuwaiti law and which are consistent with the standards of international justice.

D. Information and publication

44. According to article 70 of the Kuwaiti Constitution, no treaty can enter into force and become binding before the completion of the constitutional procedures and subsequent publication in the Official Gazette. The said article specifically refers to treaties, which must be promulgated through a legislative enactment.

45. The purpose of publication, which constitutes the final legislative stage, is to make the enactment widely known so that it can be implemented by the executive authority. Legislation is published, in the Arabic language, in the Official Gazette within two weeks from the date of its promulgation and enters into force one month after the date of its publication. This period may be prolonged or shortened if special provision therefor is made in the enactment concerned.

46. Legislation enters into force on the expiration of the specified period of time after its publication in the Official Gazette and, consequently, becomes applicable to everyone, regardless of whether they are aware or unaware of its existence.

47. All types of legislative enactments require publication, which is tantamount to an order to all official bodies and authorities to implement the provisions thereof within their respective fields of jurisdiction. It is noteworthy that the human rights instruments, including the Convention against Torture, to which Kuwait has acceded have been published in the Official Gazette in conformity with this procedure in order to make their provisions known to all.

II. INFORMATION CONCERNING THE MEASURES TAKEN BY THE STATE OF KUWAIT TO GIVE EFFECT TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

48. Paragraph 1 of this article stipulates that each State party has a general obligation to pursue a legislative policy designed to prevent acts of torture. Under the terms of paragraph 2, each State party has a general obligation to refrain from invoking any circumstances whatsoever as a justification of torture.

49. With regard to Kuwait's implementation of paragraph 1, this report reaffirms that the general policy of the State of Kuwait is to promote and protect human rights and reject anything that might violate those rights. Part I and subsequent sections of this report refer to numerous aspects of the position adopted in this connection by the Kuwaiti Constitution and Kuwaiti legislation, which contain provisions that clearly and categorically designate these inhuman acts as intolerable criminal offences which must be combated not only at the national level in each individual State but also through effective international cooperation. This is what the State of Kuwait believes in and is endeavouring to achieve.

50. Furthermore, the State of Kuwait's fulfilment of the obligation provided for in that paragraph is not confined solely to the promulgation of legislation to prevent torture. This legislation is also being enforced, as can be seen from the fact that the judiciary has handed down numerous judgements punishing public officials who have been found guilty of committing acts of torture.

51. In this connection, it is noteworthy that the State of Kuwait was one of the first States in its region to accede to this Convention.

52. With regard to the State of Kuwait's obligation to implement the provisions contained in paragraph 2, this report, while reaffirming the State's compliance with those provisions, provides a historic opportunity to highlight Kuwait's experience in this field, which can be divided into two chronological stages.

53. The first stage covers the period of the iniquitous Iraqi occupation of the State of Kuwait, since it is a historical and internationally established fact that the occupation authorities committed the most odious violations of human rights not only against the population but also against foreign residents of Kuwait. One of these odious violations consisted in the commission of acts of torture which exceeded all humanly conceivable degrees of barbarity and were documented by various official and other international bodies as evidence of war crimes as defined in the rules of international humanitarian law concerning human rights. These crimes were one of the reasons that prompted the Security Council of the United Nations to adopt the resolution calling for rapid and concerted international endeavours to liberate Kuwait.

54. The second stage, which was characterized primarily by the commission of numerous violations of human rights in Kuwait, including acts of torture against Kuwaiti citizens and others, covered the period following the liberation of Kuwait from the clutches of the iniquitous Iraqi occupation until the legitimate Kuwaiti authorities were able to re-establish their sovereign control over the territory of Kuwait. Once this had been done, one of the main priorities of the authorities was to take legal action against the persons who had committed those violations. Accordingly, the authorities did not invoke the exceptional circumstances that prevailed in Kuwait during the period from its liberation until the re-establishment of their legitimate control as a pretext to shirk their national and international legal obligations. On the contrary, they rapidly took the requisite measures to investigate the violations that had occurred and the persons responsible therefor were brought to justice. Measures were also taken to prevent any recurrence of such violations in future.

55. In addition to the above, Kuwait responded to the requests received from various governmental and non-governmental human rights organizations to investigate some practices that had occurred after the invasion and had resulted in some persons being subjected to torture or ill-treatment. The authorities replied to these allegations, clarified the situation of the persons concerned, investigated the incidents that required investigation and took legal action against the persons who were found to be involved in the commission of those acts.

Article 3

56. Under this article, every State party has an obligation to refrain from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture in the said other State. The same article also specifies the measures that must be taken to determine the latter State's record in regard to the commission of flagrant violations of human rights.

57. Concerning the State of Kuwait's compliance with this rule, it should first of all be noted that, in accordance with the principle laid down in article 46 of the Constitution, political refugees cannot be extradited. In this connection, although it might seem, at first glance, that the above-mentioned provision refers only to the situation of the political refugees to whom the rules of asylum are applied in accordance with the principles of international customary and conventional law, it also inherently implies that persons cannot be extradited to another State in cases in which there is a danger of torture since the position adopted by the Kuwaiti Constitution is clearly and totally opposed to torture.

Article 4

58. This article comprises two main provisions: (i) Each State party must ensure that acts of torture or attempted torture by any person are offences under its criminal law; (ii) These offences must be punishable by appropriate penalties. With regard to the position of Kuwaiti legislation on these provisions, it should first of all be noted that this report has already dealt with one aspect of the issues dealt with in this article when it referred to

the position of the Kuwaiti Constitution, the Penal Code and the Code of Criminal Procedure in regard to the prohibition, criminalization and punishment of torture.

59. The position of the above-mentioned legislative instruments in regard to the question of the penalties applicable to public officials is further clarified in articles 120, 121 and 125 of the Kuwaiti Penal Code.

60. Article 120 stipulates that: "Any public official who uses the authority of his office merely to harm any individual shall be punished by a term of up to three years' imprisonment and/or a fine of up to 3,000 rupees".

61. Article 121 stipulates that: "Any public official who abuses his authority by dealing harshly with people or by compelling people to perform work in circumstances other than those in which the law so permits shall be punished by a term of up to one year's imprisonment and/or a fine of up to 1,000 rupees".

62. Article 125 stipulates that: "Any public official who uses the authority of his office to compel a person to sell or dispose of his property or to relinquish his right thereto, whether in favour of the official himself or in favour of a third party, shall be punished by a term of up to three years' imprisonment and/or a fine of up to 3,000 rupees". In all such cases, the official must be dismissed from his post.

63. In addition to the above provisions dealing with questions relating to the criminalization and punishment of abuse of authority, the Kuwaiti Penal Code provides the maximum legal protection against any form of violation of physical integrity. Such violations are designated as criminal offences in articles 160-164 and 166 of the Penal Code.

64. Article 160 stipulates that: "Anyone who strikes, wounds, causes bodily harm to, or prejudices the physical integrity of, any person in an appreciable manner shall be punished by a term of up to two years' imprisonment and/or a fine of up to 2,000 rupees".

65. Article 161 stipulates that: "Anyone who severely harms another person by using him as a target for any form of projectile, by striking him with a knife or any other dangerous instrument, by throwing a caustic liquid at him, by placing such liquid or any explosive material in any place with a view to harming him, or by providing him with a narcotic substance, shall be punished by a term of up to 10 years' imprisonment, to which may be added a fine of up to 10,000 rupees".

66. Article 162 stipulates that: "Anyone who inflicts harm on another person in such a way as to cause a permanent disability shall be punished by a term of up to 10 years' imprisonment, to which may be added a fine of up to 10,000 rupees. A penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees shall be imposed if such acts of aggression cause the victim to suffer severe physical pain or render him unable to use one or more of his limbs or bodily organs in a natural manner for a period not exceeding 30 days but without causing him to suffer a permanent disability".

67. Article 163 stipulates that: "Anyone who commits a minor act of aggression of lesser gravity than the acts referred to in the preceding articles shall be punished by a term of up to three months' imprisonment and/or a fine of up to 300 rupees".

68. Article 164 stipulates that: "Anyone who unintentionally wounds or causes appreciable harm to another person by acting in a thoughtless, negligent, careless or inattentive manner or by failing to respect the regulations shall be punished by a term of up to one year's imprisonment and/or a fine of up to 1,000 rupees".

69. It is also a criminal offence to endanger anyone's physical integrity. For example, it is a punishable offence to refrain, deliberately or unintentionally, from catering for the vital needs of a person for whose welfare the offender is legally responsible for any reason whatsoever, including restriction of liberty, if, by failing to assume his responsibility, he causes harm to the said person. This is stipulated in article 166 of the Penal Code, which reads as follows: "Anyone who, being legally responsible for the welfare of another person who is unable to meet his own vital needs due to age, illness, mental disorder or restriction of his freedom, regardless of whether such responsibility arises directly from a legal obligation, a contract or a lawful or unlawful act, deliberately fails to assume his responsibility, as a result of which the victim dies or suffers harm, shall be punished, depending on the degree of criminal intent and the gravity of the harm caused, by the penalties prescribed in articles 149, 150, 152, 160, 162 and 163. If the said failure is due to unintentional negligence, the penalties prescribed in articles 154 and 164 shall apply".

70. In the State of Kuwait, the legal obligation to protect and maintain physical integrity extends to persons serving prison sentences since their welfare also constitutes a legal obligation as stipulated in articles 224, 226 and 227 of the Kuwaiti Code of Criminal Procedure and article 18 of the Prisons Regulatory Act No. 26 of 1962.

71. Article 224 of the Code of Criminal Procedure stipulates that: "Neither the warden nor any responsible officer of a prison shall permit the incarceration of a detainee therein except on the basis of a written detention order from a competent authority or a court judgement to which an enforcement order is attached. The detainee shall under no circumstances be forced to remain in the prison for a period longer than that specified in the detention order or judgement".

72. Article 226 stipulates that: "No one shall be arrested or detained except in accordance with an order, in due and proper form, issued by the competent authority in accordance with the conditions and procedures prescribed by law. Persons sentenced to imprisonment shall be confined only in prisons designated for that purpose in the laws and regulations currently in force".

73. Article 227 stipulates that: "If an examiner is informed that a person has been arrested unlawfully, he must promptly investigate the matter, proceed to the place in which the person is detained and release him. A person who

has been abducted or a child who has been removed unlawfully from the custody of his legal guardian or of the person in whose care he has been placed shall likewise be deemed to be detained unlawfully".

74. In conclusion, it should be noted that the practical applications of this article in Kuwait have been reinforced by the judgements handed down by the Kuwaiti courts in the manner already indicated in this report.

Articles 5 and 7

75. Article 5 deals with the question of the establishment of the jurisdiction of each State party to the Convention. It specifies the cases in which the State can exercise jurisdiction over the offences referred to in article 4 of the Convention. Article 7 refers to the procedures that the State party must follow if it decides that a person alleged to have committed an offence referred to in article 4 of the Convention should not be extradited but should be tried by its own courts.

76. Concerning these two articles, it should be noted that the Kuwaiti Penal Code contains provisions that regulate the applicability of the Code from the standpoint of the time and place of the commission of offences.

77. Article 11 stipulates that: "The provisions of this Code shall apply to any person who, in the territory of Kuwait and its dependencies, commits any of the offences referred to herein. Its provisions shall also apply to any person who commits an act outside Kuwaiti territory which makes him a principal offender or an accomplice in an offence which was committed wholly or partly in Kuwaiti territory".

78. Article 12 stipulates that: "The provisions of this Code shall apply to any Kuwaiti national who commits, outside Kuwait, an act which is punishable under the provisions of the law in force at the place in which he committed the said act, provided that he returns to Kuwait without being acquitted by the foreign courts of the charges brought against him".

79. The Code of Criminal Procedure lays down the general rules concerning the competence of the Kuwaiti criminal courts to hear criminal cases. Article 2 of the Code stipulates that: "The criminal courts shall be competent to try persons accused of committing felonies and misdemeanours within the limits laid down in this Code and in accordance with the procedures prescribed therein. Lesser offences shall be dealt with in accordance with a separate code regulating the courts competent to hear such offences and specifying the rules and procedures to be followed in those courts".

80. Article 23 of Legislative Decree No. 23 of 1980 promulgating the Code of Civil and Commercial Procedure lays down the general rules concerning the international jurisdiction of the Kuwaiti courts and their competence to hear cases brought against Kuwaiti or foreign nationals.

81. Article 1 of Legislative Decree No. 23 of 1990, concerning the organization of the judiciary, stipulates that the Kuwaiti courts are competent to hear cases involving any type of dispute or offence unless otherwise specified in a special legal provision.

82. In the light of the above, the Kuwaiti courts have jurisdiction over offenders and offences committed in Kuwaiti territory.

Article 6

83. This article refers to the obligations of each State party in regard to the custody of any person alleged to have committed any offence referred to in article 4 of the Convention and the measures to be taken in this connection.

84. Concerning the position of Kuwaiti legislation on this matter, the constitutional principle is that personal liberty must be guaranteed and no one may be arrested, detained, searched or subjected to restriction of his freedom of residence or movement except as provided by law (arts. 30 and 31).

85. In the light of this constitutional principle, the relevant Kuwaiti legislation, contained in the Code of Criminal Procedure, takes care to specify the safeguards that must be applied when any legal measure is taken to restrict any person's liberty or freedom of residence or movement.

86. Under article 60 of the Code, the police have an obligation to bring the arrested person before an examiner and the arrested person may under no circumstances be retained in custody for more than four days unless the examiner issues a written order for his remand in custody.

87. Under article 63, every arrest warrant must be in writing, dated and signed by the person who issues it, who must also specify the capacity in which he is acting. It must indicate the name of the person to be arrested, his place of residence, the location at which he can be found and the reason for his arrest. If the warrant is not executed within three months from its date of issue, it becomes invalid and may not subsequently be executed without a written order for its renewal.

88. Under article 70, if the accused person remains in custody for a period of six months from the date of his arrest, his detention may be extended for a further period, at the request of the examiner, only by order of the court competent to hear the case and after listening to the statements of the accused.

89. Under article 227 of the Code, to which reference has already been made in this report, if an examiner is informed that a person has been arrested unlawfully, he must promptly investigate the matter, proceed to the place in which the person is detained and release him.

90. In conclusion, it is evident from the above that Kuwait's Constitution, law and legislation diligently endeavour to safeguard the freedoms of individuals in the manner indicated and to prevent any violation thereof. These guarantees obviously apply equally to nationals and foreigners and, in such circumstances, the latter also enjoy additional safeguards consisting in the obligation to bring an interpreter to hear their statements and the obligation to inform their consulate so that it can send a representative to be present at the hearing and monitor its various stages. The consulate must

also be informed of any new developments in the proceedings, which must be attended by lawyers and in which the other customary procedures must be followed.

Article 8

91. The main provisions of this article refer to the need for cooperation among the States parties to the Convention in regard to extradition for the offences specified in article 4 of the Convention, regardless of whether or not they have concluded extradition treaties, and indicate the procedures and conditions that must be respected in every case.

92. Concerning the provisions of this article, it should first of all be noted that their theoretical and practical application falls within the context of international cooperation between two or more States. This can be achieved in various ways but primarily through the existence of treaties in which provision is made for the extradition of criminals or under the terms of international conventions in which specific acts are regarded as international crimes, as in the case of the international treaties to combat the phenomenon of international terrorism. Consequently, the purpose of the policy pursued by the State of Kuwait is to encourage the conclusion of bilateral and multilateral international treaties concerning judicial cooperation, which would obviously contain provisions regulating the extradition of criminals, or the conclusion of independent international conventions concerning their extradition.

93. With regard to conventions to combat the phenomenon of terrorism, it is noteworthy that the provisions of this article are similar to those contained in those conventions, as exemplified by article 10 of the International Convention against the Taking of Hostages, article 8 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and article 8 of the Hague Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft. It should be noted that Kuwait has acceded to the aforementioned conventions.

94. In conclusion, we wish to emphasize that the State of Kuwait is committed to the implementation of this article.

Article 9

95. The provisions of this article refer to mutual judicial assistance between States parties to this Convention in connection with criminal proceedings brought in respect of the offences mentioned in article 4 and stipulate that the States parties should fulfil this obligation in conformity with any treaties on mutual judicial assistance that may exist between them.

96. In this connection, the State of Kuwait is extremely eager to conclude treaties on mutual legal and judicial assistance with any friendly States and endeavours to include judicial assistance among the provisions of those treaties in order to ensure that foreign nationals residing in any of the contracting States are able to exercise their legal rights easily and without hindrance.

97. The treaties that the State of Kuwait has concluded with numerous countries contain a special section on judicial assistance in civil and criminal matters under the terms of which all the nationals of each contracting party residing in the territory of the other party enjoy the right to receive the same judicial protection as that afforded to nationals of the other party. Under those treaties, nationals of the two contracting parties also enjoy unrestricted freedom to apply to the courts and other judicial authorities in order to uphold and defend their rights and interests through, inter alia, the submission of documentary evidence, the organization of inspections, the cross-examination of adversaries and the hearing of witnesses and experts. Examples of these treaties are the Legal and Judicial Cooperation Agreement between the State of Kuwait and the Republic of Tunisia and the Legal and Judicial Cooperation Agreement on Civil, Commercial, Criminal and Personal Status Matters between the State of Kuwait and the Arab Republic of Egypt, which are only some of the treaties that Kuwait has concluded in this field.

98. Furthermore, the judicial cooperation agreements concluded by the State of Kuwait, in which provision is made for assistance in regard to criminal proceedings and access to evidence in the State's possession, stipulate that the State must seize and hand over objects which constitute evidence or which were acquired either as a result of the offence or in return for objects acquired as a result of the offence, if they are found in the possession of the wanted person at the time of his arrest.

Article 10

99. This article emphasizes the obligation of each State party to ensure that education and information regarding the prohibition against torture are included in the training programmes for law enforcement personnel. It also gives a general indication of the measures to be taken to that end.

100. With regard to this article, it is noteworthy that the Penal Code and the Code of Criminal Procedure are subjects which form part of the curriculum taught at the Faculty of Law at Kuwait University, since some of its students will be responsible for implementing those two Codes.

101. These subjects are also taught to police cadets at the Police Academy and to candidates for senior posts in the Department of Public Prosecutions, who study at the Kuwaiti Institute for Judicial Studies, in their capacity as future law enforcement personnel.

Article 11

102. Article 11 of the Convention stipulates that: "Each State party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment ...".

103. In this regard, the provisions of the Code of Criminal Procedure give a detailed account of the rules and principles governing preliminary examinations, interrogations and remand in custody, as well as the guarantees needed to safeguard the rights of persons subjected to arrest, detention or

imprisonment, including the prohibition of any form of physical or mental duress, torture or violation of their inherent human dignity. The said Code also indicates that the Department of Public Prosecutions is responsible for monitoring the actions of the police during arrest and search operations in various circumstances.

104. Article 45 of the Code stipulates that: "During their inquiries, police officers may use investigatory methods that do not harm or restrict the freedoms of individuals, but none of them is empowered to examine a suspect unless he is legally vested with the capacity of an examiner".

105. Article 60 further stipulates that no arrested person may be held in custody for more than four days without a written order.

106. In conclusion, the competent court is the highest authority empowered to determine whether all the procedures followed were correct and in conformity with the law. The court also has full discretion to weigh the evidence and form its own opinion in accordance with the dictates of its conscience.

Articles 12 and 13

107. The basic subject dealt with in article 12 is the obligation of each State party to ensure that its competent authorities proceed to a prompt and impartial investigation whenever an act of torture has been committed in any territory under its jurisdiction.

108. Article 13 emphasizes the need to safeguard the rights of any individual who alleges that he has been subjected to torture.

109. With regard to the provisions of the two above-mentioned articles, it should first of all be noted that Kuwaiti law guarantees a prompt and impartial investigation whenever any breach of the law is committed. Acts of torture are obviously among the offences that merit such investigation.

110. Under the Code of Criminal Procedure, any person who has been subjected to torture has a guaranteed right to lodge a complaint with the competent authorities who, in turn, have an obligation to take steps to deter the aggressor and ensure the triumph of justice. This is most clearly illustrated by the judicial precedents set by the Kuwaiti courts which have tried persons who, after an impartial investigation, were found to be involved in acts of torture. All the rights of the victims were safeguarded, including the right to call witnesses and submit evidence for the prosecution without any fear or intimidation. These courts, at various levels of jurisdiction, handed down judgements, to which reference has already been made in this report, convicting the persons found to be involved in the commission of acts of torture, brutality or degrading treatment.

111. In addition to the above, in the State of Kuwait there are specific rules governing procedure and evidence in judicial examinations, which can be conducted only by persons vested with the capacity of an examiner, i.e. members of the Department of Public Prosecutions, senior police officers and persons appointed as examiners in the police and public security departments.

Article 14

112. This article refers to the obligation of each State party to ensure that, under its legal system, the victim of an act of torture obtains fair and adequate redress in accordance with the principles laid down therein. Paragraph 2 stipulates that nothing in the said article shall effect any right of the victim or other persons to compensation which might exist under national law.

113. In this connection, it should be noted that, under the terms of the Civil Code promulgated in Legislative Decree No. 67 of 1980, any detriment caused must be remedied. Section 3 of the Code deals with the legal aspects of the detrimental act. Its articles are divided into two main categories, the first of which sets forth the rules of liability in respect of unlawful acts, while the second makes provision for compensation in the event of personal injury.

114. The aim which this article seeks to achieve is guaranteed by the Civil Code under which anyone who, through a culpable act, causes direct or consequential harm to another person is obliged to pay compensation in respect of the harm caused by his culpable act even if he is incapable of exercising discretion. If the harm is attributable to a culpable act committed by more than one person, each of them is liable to compensate the victim for the full extent of the harm caused. The harm for which the person responsible for the unlawful act is obliged to pay compensation covers any loss, including loss of earnings, provided that it is a natural consequence of the unlawful act. Compensation is also payable in respect of mental pain or suffering caused by an act prejudicial to a person's life, body, liberty, dignity, honour, reputation, social or moral status or financial standing.

115. Article 227 of the Civil Code stipulates that: "Anyone who, through a culpable act, causes direct or consequential harm to another person shall be obliged to pay compensation in respect of the harm caused by his culpable act even if he was incapable of exercising discretion".

116. Article 230 stipulates that: "The harm for which the person responsible for the unlawful act is obliged to pay compensation shall cover any loss, including loss of earnings, provided that it is a natural consequence of the unlawful act. The loss, including loss of earnings, shall be deemed to be a natural result of the unlawful act if it could not be avoided by a reasonable endeavour which an ordinary person might be expected to make in the given circumstances".

117. Article 231 stipulates that: "The compensation payable in respect of the unlawful act shall cover any harm caused, including mental pain or suffering, particularly that caused by an act prejudicial to a person's life, body, liberty, dignity, honour, reputation, social or moral status or financial standing. Mental pain or suffering shall also include the grief and distress with which a person is afflicted and the feelings of love and tenderness which he misses as a result of the death of someone who was dear to him".

118. Under the terms of article 111 of the Code of Criminal Procedure, anyone who suffers harm as a result of an offence has the right to bring a civil action before the court which is hearing the criminal proceedings, regardless of the stage reached in those proceedings, until such time as the final pleadings have been presented. A civil claimant may file a claim during the preliminary examination by submitting an application to the examiner, in which case he is treated as a claimant during the examination.

119. Under the said Code, if the victim brings a civil action for damages, the criminal court is empowered to adjudicate in the civil action unless it decides to refer the case to the competent civil court. Even in the absence of a civil action, the court may, on its own initiative, order the defendant to pay damages if the victim undertakes to refrain from claiming any other compensation in respect of the offence in question.

120. Article 112 stipulates that the civil claimant may sue the person bearing civil liability in the action that he brings before the criminal court or during the preliminary examination. The person bearing civil liability may also intervene, on his own initiative, during the criminal proceedings at the trial or examination stage, even if no civil action has been brought. In both cases, the person bearing civil liability is regarded as a co-defendant in the criminal proceedings.

121. According to article 113: "In the judgement that it hands down in the criminal proceedings, the criminal court shall adjudicate on the actions for damages brought before it by the adversaries. However, if it finds that a simultaneous judgement in both the civil and criminal actions would entail a delay in the judgement of the criminal action, the criminal court may separate the two actions and hand down a separate judgement in the criminal action, postponing the hearing of the civil action until a future session or referring it to the competent civil court".

122. Under article 114: "Any person who brings a civil action before a criminal court shall be entitled to abandon his civil action at any stage of the criminal proceedings. He shall not thereby forfeit his right to bring his action before a civil court unless he simultaneously declared his intention to abandon his civil claim. The civil claimant's abandonment of his action shall not affect the rights of the defendant or of the person bearing civil liability towards him, nor shall it prevent the court from ordering him to pay the costs if it deems appropriate.

"If the civil claimant fails to appear without a valid reason, the court may regard him as having abandoned his action".

123. Under article 115: "If the defendant is convicted, the court may, on its own initiative, order him to pay compensation in respect of the detriment resulting from the offence, provided that the person to whom such compensation is awarded undertakes to refrain from claiming any other damages in respect of the same offence.

"If so requested by the convicted person, the court may order payment of the compensation in instalments".

124. In this regard, it should be noted that torture obviously falls within the category of offences constituting unlawful acts to which all the above-mentioned rules apply. Furthermore, anyone who, under the terms of a final court judgement, is found to have been subjected to torture or degrading treatment obviously has the right to subsequently bring a civil action for damages in respect of the material detriment, pain and suffering and loss of earnings that he incurred.

Article 15

125. Under the terms of this article, any confession made as a result of torture is inadmissible as evidence except against a person accused of torture.

126. It is noteworthy that, as already indicated in this report, the position of Kuwaiti law on this question is consistent with the rule laid down in this article, as can be seen from the stipulation contained in article 159 of the Kuwaiti Code of Criminal Procedure to the effect that any statements or confessions made as a result of torture are inadmissible as evidence in Kuwaiti courts. Accordingly, the invalidity of any statements or confessions made by the defendant as a result of torture implies the invalidity of any subsequent measures taken on the basis of such confessions extracted under torture or coercion.

127. It is noteworthy that this principle, which has been incorporated in the body of Kuwaiti law, was established long ago in the provisions of the Islamic Shari'a under which "anything based on an invalid premiss is itself invalid".

128. In addition to the above, the provisions of this article are applied in accordance with article 158 of the Code of Criminal Procedure, which stipulates that the defendant shall not be required to take the oath, nor shall he be coerced or induced to answer or to make specific statements by any means whatsoever. The defendant's silence or refusal to answer a question must not be regarded as implying a confession and must not be held against him. He cannot be punished for perjury in respect of the statements that he makes in his own defence. The reason for not requiring the defendant to take the oath and not compelling him to answer is to ensure that he is not subjected to any form of coercion, even of a moral nature.

Article 16

129. Under this article, each State party has an obligation to prevent in its territory any acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, in accordance with the terms and conditions set forth therein.

130. In this regard, Kuwaiti law designates as criminal offences not only acts of torture, especially if committed by public officials wielding authority, but also any act committed by such officials which, although not amounting to torture, is prejudicial to dignity or constitutes cruel or degrading treatment. The Penal Code stipulates that it is a criminal offence for any public official or public servant to abuse his authority by treating people in a harsh, dishonourable or physically painful manner, by obliging

people to perform work in circumstances other than those in which the law so permits, or by using people for tasks other than those for which they were assembled in accordance with the law. It is also a criminal offence for any public official to use the authority of his office to compel a person to sell or dispose of his property or to relinquish his right thereto, whether in favour of the official himself or in favour of a third party. These offences are dealt with in articles 56, 57 and 58 of the Penal Code.

131. Article 56 stipulates that: "Any public official or employee and any public servant who abuses his authority by treating people in a harsh, dishonourable or physically painful manner shall be punished by a term of up to three years' imprisonment and/or a fine of up to 225 dinars".

132. Article 57 stipulates that: "Any public official or employee and any public servant who compels people to perform work in circumstances other than those in which the law so permits or who uses people for tasks other than those for which they were assembled in accordance with the law shall be punished by a term of up to two years' imprisonment and shall be ordered to pay the cost of the wages due to the persons so used in an unlawful manner".

133. Article 58 stipulates that: "Any public official who uses the authority of his office to compel a person to sell or dispose of his property or to relinquish his right thereto, whether in favour of the official himself or in favour of a third party, shall be punished by a term of up to three years' imprisonment and/or a fine of up to 225 dinars".

134. The above provisions clearly show the extent to which Kuwaiti law diligently safeguards human dignity and protects it from any form of cruel or degrading treatment to which it might be subjected, even if such treatment does not amount to torture.

Conclusion

135. This report has endeavoured to highlight numerous aspects of Kuwait's legislative policy in regard to the prevention of torture in a manner consistent with the provisions and rules set forth in the Convention under review which, in actual fact, are being applied by the Kuwaiti judiciary.

136. Finally, in this report we wish to affirm that Kuwait's policy in this regard is in keeping with one of the fundamental aims of Kuwaiti society, which is to do everything possible to promote and support the cause of human rights and continue to cooperate with the international organizations concerned in furtherance of the lofty objectives that this cooperation seeks to achieve.

137. The Kuwaiti authorities trust that this report will serve the purpose for which it is intended and affirm their readiness to provide further clarifications in this regard when the report is discussed by the Committee concerned.

List of annexes*

No.

1. Booklet published by the Ministry of Planning containing information on the State of Kuwait, together with the following statistical publications:

   (a) Monthly Statistical Bulletin for December 1996;

   (b) Statistical Yearbook for 1995;

   (c) General Population Census of 1995;

   (d) Annual Bulletin of Vital Statistics (Births and Deaths) for 1994;

   (e) Amended preliminary estimates of the national accounts for the years 1993 to 1995.

2. Copy of Act No. 35 of 1962, concerning elections to the National Assembly.

3. The Organization of the Judiciary Act No. 23 of 1990.

4. Act No. 10 of 1996, amending some of the articles of the Organization of the Judiciary Act.

5. Judgements handed down by the Kuwaiti courts under the terms of which public officials have been punished for committing acts of torture:

   (a) Judgement of 21 May 1995 handed down by the Criminal Court in case No. 2822, together with the appeal judgement of 15 November 1995 and the ruling handed down by the Court of Cassation on 16 September 1996;

   (b) Judgement of 22 January 1996 handed down by the Criminal Court in case No. 2785 and the appeal judgement of 22 May 1996 in the same case.

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* The annexes may be consulted at the Office of the United Nations High Commissioner for Human Rights.